

Federal Defenders
OF NEW YORK, INC.

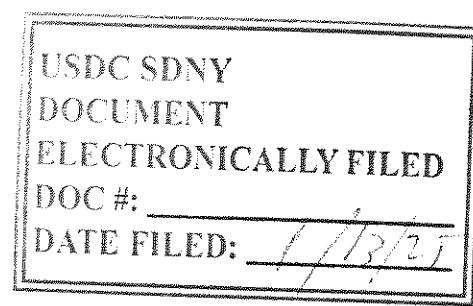
Tamara Giwa
*Executive Director and
Attorney-in-Chief*

MEMO ENDORSED

*Southern District of New York
Jennifer L. Brown
Attorney-in-Charge*

December 13, 2024

Hon. Lewis A. Kaplan
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007



**Re: United States v. Sony Estevez Pimentel
24 Cr. 570 (LAK)**

Your Honor:

Pursuant to Rule 12(b)(B) of the Federal Rules of Criminal Procedure, Mr. Pimentel moves to dismiss Counts 1 and 2 of the Indictment, each count alleging a violation of Title 18, U.S.C. §922 (o). Both counts of the Indictment must be dismissed because the Second Amendment of the United States Constitution does not permit a blanket prohibition on machine guns. The statutory allegations, as applied to Mr. Pimentel, are unconstitutional because they do not allege any conduct other than the possession and transfer of a machine gun and the history of firearms regulations do not reach such conduct.

The Indictment's Allegations

Mr. Pimentel is charged with conspiring to possess and transfer a machine gun and with possessing and transferring a machine gun, both in violation of Title 18, U.S.C. Sec. 922(o). Section 922(o) imposes a blanket prohibition on the possession and/or transfer of a machine gun. A machine gun is defined in Title 26, U.S.C. § 5845 as "an weapon which shoots....automatically more than one shot, without manual reloading, by a single function of the trigger.....includ[ing] any part designed and intended solely and exclusively....for use in converting a weapon into a machine gun."

Denied.

SO ORDERED

Lewis A. Kaplan

LEWIS A. KAPLAN, USDJ

1/13/25